



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-939]

Certain Three-Dimensional Cinema Systems and Components Thereof
Commission's Final Determination Finding a Violation of Section 337; Issuance of a
Limited Exclusion Order and Cease and Desist Orders;
Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in this investigation. The Commission has issued a limited exclusion order prohibiting the importation of certain three-dimensional cinema systems, and components thereof, that infringe certain claims of the patents at issue. The Commission has also issued cease and desist orders directed to the two respondents. The remedial orders are suspended as to certain patent claims pending final resolution of a validity issue. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The

public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 12, 2014, based on a complaint filed by RealD, Inc. of Beverly Hills, California ("RealD"). 79 FR 73902-03 (Dec. 12, 2014). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain three-dimensional cinema systems, and components thereof, that infringe certain claims of U.S. Patent Nos. 7,905,602 ("the '602 patent"); 8,220,934 ("the '934 patent"); 7,857,455 ("the '455 patent"); and 7,959,296 ("the '296 patent"). *Id.* at 73902. The notice of investigation named as respondents MasterImage 3D, Inc. of Sherman Oaks, California, and MasterImage 3D Asia, LLC of Seoul, Republic of Korea (collectively, "MasterImage"). *Id.* at 73903. The Office of Unfair Import Investigations was not named as a party to the investigation. *Id.*

On July 23, 2015, the Commission terminated the investigation as to various of the asserted claims and the '602 patent in its entirety. Notice (July 23, 2015) (determining not to review Order No. 6 (July 2, 2015)); Notice (Aug. 20, 2015) (determining not to review Order No. 7 (Aug. 3, 2015)).

On September 25, 2015, the Commission determined on summary determination that RealD satisfied the economic prong of the domestic industry requirement through its significant investment in plant, significant investment in labor, and substantial investment in engineering, research, and development. Notice (Sept. 25, 2015) (determining to review in part Order No. 9 (Aug. 20, 2015)). The Commission, however, reversed the summary determination with respect

to RealD's investment in equipment. *Id.*

On December 16, 2015, the presiding administrative law judge ("ALJ") issued a final initial determination ("ID") finding a violation of section 337 with respect to the three remaining asserted patents. The ALJ found that the asserted claims of the '455, '296, and '934 patents are infringed and not invalid or unenforceable. The ALJ found that the technical prong of the domestic industry requirement was satisfied for the '455, '296, and '934 patents. The ALJ also issued a Recommended Determination on Remedy and Bonding ("RD"), recommending that a limited exclusion order and cease and desist orders should issue and that a bond of 100 percent should be imposed during the period of Presidential review.

On December 29, 2015, MasterImage filed a petition for review challenging various findings in the final ID. On January 6, 2016, RealD filed a response to MasterImage's petition. On January 15, 2016, and January 19, 2016, MasterImage and RealD respectively filed post-RD statements on the public interest under Commission Rule 210.50(a)(4). The Commission did not receive any post-RD public interest comments from the public in response to the Commission notice issued on December 22, 2015. 80 FR 80795 (Dec. 28, 2015).

On February 16, 2016, the Commission determined to review the final ID in part and requested additional briefing from the parties on certain issues. 81 FR at 8744-45. Specifically, the Commission determined to review (1) the ID's construction of the "uniformly modulate" limitation recited in claims 1 and 17 of the '455 patent; (2) the ID's infringement findings with respect to the asserted claims of the '455 patent; (3) the ID's findings on validity of the asserted claims of the '455 patent; (4) the ID's finding of proper inventorship of the '296 patent; (5) the ID's findings on validity of the asserted claims of the '934 patent; and (6) the ID's finding regarding the technical prong of the domestic industry requirement with respect to the '455

patent. *Id.* at 8745. The Commission also solicited briefing from the parties and the public on the issues of remedy, the public interest, and bonding. *Id.*

On March 1, 2016, the parties filed initial written submissions addressing the Commission's questions and the issues of remedy, the public interest, and bonding. On March 11, 2016, the parties filed response briefs. No comments were received from the public. On April 18, 2016, the Commission requested additional briefing on the effect of a Final Written Decision issued by the Patent Trial and Appeal Board of the U.S. Patent and Trademark Office ("PTAB") on April 14, 2016, finding certain claims of the '934 patent unpatentable, on the Commission's final determination. 81 FR 23749-50 (Apr. 22, 2016). On April 26, 2016, the parties filed initial written submissions addressing the Commission's question. On May 3, 2016, the parties filed response briefs.

Having examined the record of this investigation, including the final ID and the parties' submissions, the Commission has determined that RealD has proven a violation of section 337 based on infringement of claims 1-3, 9-11, 13, 15, 17-19, and 21 of the '455 patent; claims 1, 2, 7, 8, 11, and 12 of the '296 patent; and claims 1, 6, and 11 of the '934 patent. The Commission has determined to modify the ALJ's construction of the "uniformly modulate" limitation recited in claims 1 and 17 of the '455 patent. Under the modified construction, the Commission has determined that RealD has proven that the accused MasterImage Horizon 3D, 3D S, M, Rv1, and Rv2 products infringe the asserted claims of the '455 patent and that the technical prong of the domestic industry requirement is satisfied with respect to that patent. The Commission has determined that the asserted claims of the '455 patent are not invalid under 35 U.S.C. sections 102(e), 102(g), 103, and 112, ¶¶ 1 and 2. The Commission has determined that the asserted claims of the '296 patent are not invalid under 35 U.S.C. 116 for improper inventorship. The

Commission has also determined that the asserted claims of the '934 patent are not invalid under 35 U.S.C. sections 102(g) and 103.

The Commission has determined the appropriate remedy is a limited exclusion order prohibiting the importation of certain three-dimensional cinema systems, and components thereof, that infringe the asserted claims of the '455, '296, and '934 patents and cease and desist orders directed against MasterImage. The Commission has determined the public interest factors enumerated in section 337(d)(1) and (f)(1) do not preclude issuance of the limited exclusion order or cease and desist orders.

In view of the PTAB's Final Written Decision finding certain claims of the '934 patent unpatentable, the Commission has determined to suspend the enforcement of the limited exclusion order and cease and desist orders as to claims 1, 6, and 11 of the '934 patent pending final resolution of the PTAB's Final Written Decision. *See* 35 U.S.C. 318(b).

The Commission has also determined to set a bond in the amount of 100 percent of the entered value of excluded products imported during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 21, 2016.

Lisa R. Barton,
Secretary to the Commission.

